



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8  
999 18<sup>TH</sup> STREET - SUITE 300  
DENVER, CO 80202-2466  
<http://www.epa.gov/region08>

August 22, 2006

Ref: 8ENF-T

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Jim McCotter  
Deer Haven Lodge  
P.O. Box 86  
Tensleep, WY 82442

Re: Complaint and Notice of  
Opportunity for Hearing  
Docket No. **SDWA-08-2006-0053**

Dear Mr. McCotter:

Enclosed is an administrative "Complaint and Notice of Opportunity for Hearing" (complaint) filed against you under section 1414 of the Safe Drinking Water Act (SDWA), 42 U.S.C § 300g-3. The U.S. Environmental Protection Agency (EPA) alleges in the complaint that you failed to comply with Administrative Order, Docket No. SDWA-08-2004-0012, issued on January 15, 2004, under section 1414(g) of the SDWA, 42 U.S.C. § 300g-3(g). The violations are described in the complaint.

By law, you have the right to request a hearing regarding the matters set forth in the complaint. Please pay particular attention to those parts of the complaint entitled "Opportunity to Request a Hearing" and "Failure to File an Answer." If you do not respond to this complaint within 30 days of receipt, a default judgment may be entered and the proposed civil penalty may be assessed without further proceedings. In your answer you may request a hearing. You have the right to be represented by an attorney at any stage of these proceedings.

Whether or not you request a hearing, you may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty.

EPA encourages all parties against whom it files a complaint proposing assessment of a penalty to pursue the possibilities of settlement through an informal conference. Any such settlement shall be finalized by the issuance of a final order by the Regional Judicial Officer, EPA Region 8. The issuance of a consent agreement shall constitute a waiver of your right to request a hearing on any matter to which you have stipulated therein.



Jim McCotter / Deer Haven Lodge  
Page 2 of 2

A request for an informal conference does not extend the 30-day period during which you must submit a written answer and a request for a hearing. The informal conference procedure may be pursued as an alternative to, and simultaneously with, the adjudicatory hearing.

For any questions specific to the violations or penalty, the most knowledgeable people on my staff regarding this matter are Lisa Kahn, Team Leader, Drinking Water Enforcement Program, who can be reached at 800/227-8917 extension 6896, or Peggy Livingston, Enforcement Attorney, who can be reached at 800/227-8917 extension 6858.

We urge your prompt attention to this matter.

Sincerely,

**SIGNED**

Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosure

cc: WY DEQ (via email)  
WY DOH (via email)

\_\_\_\_\_ UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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IN THE MATTER OF )  
 )  
 )  
 )  
 Jim McCotter, Owner )  
 Deer Haven Lodge )  
 Ten Sleep, Wyoming ) Docket No. SDWA-08-2006-**0053**  
 )  
 Respondent ) **COMPLAINT AND NOTICE OF**  
 ) **OPPORTUNITY FOR HEARING**  
 Proceedings under section 1414(g) )  
 of the Safe Drinking Water Act, )  
 42 U.S.C. § 300g-3(g) )  
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**COMPLAINT**

This civil administrative Complaint and Notice of Opportunity for Hearing ("complaint") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by section 1414(g)(3) of the Safe Drinking Water Act, as amended (the "SDWA"), 42 U.S.C. § 300g-3(g)(3). Section 1414(g)(3) of the SDWA authorizes the Administrator of the EPA to assess an administrative civil penalty against any person who violates, or fails or refuses to comply with, an order issued under section 1414(g)(1) of the SDWA.

The complainant in this action is the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, who has been duly authorized to institute this action. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or

Suspension of Permits," 40 C.F.R. part 22 ("Consolidated Rules of Practice")(Complainant's Exhibit 1).

### **GENERAL ALLEGATIONS**

The following general allegations apply to each count of this complaint:

1. Jim McCotter ("Respondent") is an individual and therefore a "person" within the meaning of section 1401(12) of the SDWA, 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.
2. The Respondent owns and/or operates a system, the Deer Haven Lodge system (the "System"), located in Washakie County, Wyoming, for the provision to the public of piped water for human consumption.
3. The System has at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents and is therefore a "public water system" within the meaning of section 1401(4) of the SDWA, 42 U.S.C. § 300f(4), and a "non-community water system" within the meaning of section 1401(15) of the SDWA, 42 U.S.C. § 300f(15) and 40 C.F.R. § 141.2.
4. As owner and/or operator of a public water system, the Respondent is a "supplier of water" within the meaning of section 1401(5) of the SDWA, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2. The Respondent is therefore subject to the requirements of part B of the SDWA, 42 U.S.C. § 300g et seq., and its implementing regulations, 40 C.F.R. part 141 (also known as the National Primary Drinking Water Regulations or NPDWRs).

5. The source of the System's water is two springs. The System serves an average of 50 persons daily through 20 service connections year-round.
6. On January 15, 2004, EPA issued an Administrative Order (the "Order") (Docket No. SDWA-08-2004-0012) to the Respondent pursuant to section 1414(g)(1) of the SDWA, 42 U.S.C. § 300g-3(g)(1), citing violations of the NPDWRs, including requirements to monitor for nitrate and total coliform bacteria, and to notify EPA and the public of these violations. A copy of the Order is attached to this complaint and incorporated herein (Complainant's Exhibit 2).

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**SPECIFIC ALLEGATIONS**

**Count I  
Failure to Monitor for Nitrate**

7. According to 40 C.F.R. § 141.23(d), public water systems are required to monitor their water at least annually to determine compliance with the Maximum Contaminant Level ("MCL") established for nitrate pursuant to 40 C.F.R. § 141.62.
8. Page 5 of the Order, in paragraph 1 of the "Order" section, required Respondent to comply with the nitrate monitoring requirements of 40 C.F.R. § 141.23(d).
9. Respondent failed to monitor the System's water for nitrate in 2005, in violation of the Order and 40 C.F.R. § 141.23(d).

**Count II**  
**Failure to Monitor for Total Coliform Bacteria**

10. According to 40 C.F.R. § 141.21, non-community public water systems using ground water are required to monitor their water at least quarterly to determine compliance with the Maximum Contaminant Level (“MCL”) established for total coliform bacteria pursuant to 40 C.F.R. § 141.63.
11. Page 6 of the Order, in paragraph 2 of the “Order” section, required the Respondent to comply with the total coliform bacteria monitoring requirements of 40 C.F.R. § 141.21.
12. The Respondent failed to monitor the System’s water for total coliform bacteria contamination during the second and third quarters of 2005, in violation of the Order and 40 C.F.R. § 141.21.

**PROPOSED ADMINISTRATIVE CIVIL PENALTY**

Section 1414(g)(3) of the SDWA, 42 U.S.C. § 300g-3(g)(3), authorizes the Administrator to assess an administrative civil penalty of up to \$27,500<sup>1</sup> for violation of an administrative order issued under section 1414(g)(1) of the SDWA. The proposed penalty has been determined in accordance with section 1414 of the SDWA, 42 U.S.C. § 300g-3. For purposes of calculating a rational and consistent penalty proposed to be assessed, EPA has taken into account the seriousness of the violation, the population at risk, and other appropriate factors, including Respondents' degree of willfulness and/or negligence, history of noncompliance, if any, and

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<sup>1</sup>The original statutory amount of \$25,000 has been adjusted for inflation pursuant to 40 C.F.R. part 19.

ability to pay, as known to EPA at this time. Based on the above factors, EPA proposes to assess an administrative civil penalty of \$800.00 against the Respondent for his violations of the Order.

### **OPPORTUNITY TO REQUEST A HEARING**

As provided in section 1414(g)(3)(B) of the SDWA, 42 U.S.C. § 300g-3(g)(3)(B), the Respondent has the right to request a public hearing on any material fact alleged in this complaint or on the appropriateness of the proposed penalty or to assert that he is entitled to judgment as a matter of law.

If the Respondent wishes to request a hearing, the Respondent must file a written answer in accordance with 40 C.F.R. §§ 22.15 and 22.42 within thirty (30) calendar days after this complaint is served. If this complaint is served by mail, Respondent has an additional five (5) calendar days, pursuant to 40 C.F.R. § 22.7(c).

If the Respondent's answer requests a hearing, the procedures provided in 40 C.F.R. part 22, subpart I, will apply to the proceedings, and the Regional Judicial Officer will preside. However, the Respondent has the right under the SDWA to elect a hearing on the record in accordance with section 554 of the Administrative Procedure Act, 5 U.S.C. §§ 551, et seq. ("APA"). To exercise this right, the answer for the Respondent must include a specific request for a hearing on the record in accordance with 5 U.S.C. § 554. Upon such request, the Regional Hearing Clerk will recaption the pleadings and documents in the record as necessary. (See 40 C.F.R. § 22.42.) Pursuant to such a request, subpart I will not apply to the proceedings and an Administrative Law Judge from Washington, D.C., will preside.

Any answer must be in writing. An original and one copy of the answer must be sent to the attorney listed below and the EPA Regional Hearing Clerk at the following address:

Tina Artemis  
Region 8 Hearing Clerk (8RC)  
U.S. Environmental Protection Agency  
999 18th Street, Suite 300  
Denver, Colorado 80202-2466

**FAILURE TO FILE AN ANSWER**

To avoid entry of a default order against the Respondent pursuant to 40 C.F.R. § 22.17 for the full amount of the penalty proposed in this complaint, the Respondent must file a written answer with the Regional Hearing Clerk at the address above within thirty (30) days of receipt of this complaint. The answer should clearly and directly admit, deny, or explain each of the factual allegations contained in this complaint with regard to which the Respondent has any knowledge. The answer should state (1) the circumstances or arguments which are alleged to constitute grounds of defense, (2) a concise statement of the facts which the Respondent intends to place at issue in the hearing, and (3) whether a hearing is requested. Failure to admit, deny, or explain any material factual allegation contained in this complaint shall constitute an admission of the allegation.

**SETTLEMENT CONFERENCE**

EPA encourages the exploration of settlement possibilities through an informal settlement conference. Please note that a request for, scheduling of, or participation, in a settlement conference does not extend the period for filing an answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative

litigation procedures found in 40 C.F.R. part 22. If a settlement can be reached, its terms shall be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Presiding Officer. A request for a settlement conference, or any questions that Respondents may have regarding this complaint, should be directed to the attorney named below.

Dated this 18<sup>TH</sup> day of August, 2006.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8

Complainant.

**SIGNED**

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Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

**SIGNED**

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Margaret J. ("Peggy") Livingston  
Enforcement Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice  
U.S. EPA Region 8  
999 18th Street, Suite 300  
Denver, Colorado 80202-2466  
Telephone Number: (303) 312-6858  
Facsimile Number: (303) 312-6953

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and a copy of the COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING with all Exhibits were hand-carried to the Regional Hearing Clerk, EPA, Region 8, 999 18th Street, Denver, Colorado, and that a true copy of the same was sent to each of the following:

Via CERTIFIED MAIL/RETURN RECEIPT REQUESTED to:

Jim McCotter  
Deer Haven Lodge  
P.O. Box 86  
Tensleep, WY 82442

Date: August 22, 2006

By: SIGNED  
Judith McTernan

**IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.**

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE ON AUGUST 22, 2006.**